

### **REMARKS**

Claims 1-8 and 10-14 were pending in the current application. Applicants have amended claims 1, 2, and 10-14 and added new claims 15-21. Reexamination and reconsideration of all of the claims are respectfully requested.

#### **Claim Objections**

The Office Action objected to the dependency of claim 10 on claim 9, which was not filed in the original application. Applicants have amended claim 10 to depend on claim 8 and submit that by this amendment claim 10 is no longer objectionable. The Office Action also discussed claims 11 and 12, and while Applicants do not agree with the characterization of the wording of claims 11 and 12, Applicants have amended claims 11 and 12.

#### **§§102/103**

The Office Action rejected claims 1 and 7 under 35 U.S.C. §102(e) based on Swift et al., U.S. Patent Publication 2002/0122585 (“Swift”). The Office Action also rejected claims 13 and 14 under 35 U.S.C. §102(b) based on Yamamoto et al., U.S. Patent 5,138,697 (“Yamamoto”).

The Office Action also rejected dependent claim 2 under 35 U.S.C. §103 based on Swift in combination with Yamamoto, and dependent claims 3-6, 8, and 10-12 under 35 U.S.C. §103 based on Swift in combination with Loveridge et al., U.S. Patent 5,982,941 (“Loveridge”).

#### ***Swift – Independent claim 1***

FIG. 6 of Swift illustrates a design where a stereoscopic 3D media file is scaled, or its dimensions changed, forming “scaled” stereo media. Scaling is not a format conversion as that term is understood to those skilled in the art. Scaling is simply changing the size of stereo images from one size to another size. Further, Swift does not disclose a “map” in accordance with the express language of claim 1 – namely, setting

forth a predefined relationship between formats used in converting images between formats.

In contrast, the present design converts images from one format to another, where the second format is a stereo or stereoscopic format. The first format may be a stereo or planar format, and formats are described in the current specification at, for example, FIG. 1A and 1B, as well as p. 6, wherein “planar” “above/below,” “side-by-side,” “side-by-side squashed,” “interline,” “interlace,” and so forth are provided as examples of different formats, with all but “planar” representing stereo or stereoscopic formats.

Those skilled in the art understand that when a conversion between “formats” is disclosed or discussed, such a format conversion does not mean a simple size conversion or scaling transformation. In support of this contention that scaling is not format conversion as that term is understood to those skilled in the art, Applicants submit herewith as Exhibit A a paper written by inventor Lenny Lipton, entitled *Stereo-Vision Formats for Video and Computer Graphics*, 1997, that defines “stereoscopic format” as follows:

*An electro-stereoscopic-format is the method used for assigning pixels (or aggregates of pixels -- lines or fields) to respective left and right images, thus making them available at the display screen, to the eyes of the observer, as an image with binocular stereopsis.*

Exhibit A, p. 1 (emphasis in original)

This definition, in combination with the phrase employed in claim 1 of “converting each pixel of the input image to a corresponding pixel for an output image in accord with a map setting forth a predefined relationship between the first format and the second stereoscopic format” indicates that simple scaling or size conversion is not a format conversion, as scaling does not convert pixels from one format (pixels assigned in

one manner to left and right fields) to a second format (pixels assigned in a different manner to left and right fields).

Swift supports this understanding, stating at Applicants have employed the commonly understood definition of stereoscopic format to claim 1 and submit that by this amendment and the use of the term “stereoscopic” in connection with the second format, the present claim 1 is not anticipated by the scaling method of Swift.

Applicants further submit that claim 1, as amended, includes the phrase “a map setting forth a predefined relationship between the first format and the second stereoscopic format...” Swift includes no such map, and no such map is either express or implied. The Office Action contends that this “map” limitation is shown by “individually scaled 504, 506, Swift, figure 6, paragraph 0041-0042.” Office Action, p. 3. Swift scales media in each of the left and right frames, shown as scale left media 504 and scale right media 506, and paragraphs [0041]-[0042] simply say that stereo media is scaled without saying how. Swift is devoid of any explanation of the scaling procedure, algorithm, or methodology. However, no map is disclosed nor implied. Applicants submit that no map setting forth a predefined relationship between the first format and the second stereoscopic format is provided in Swift. For this further reason, Swift does not anticipate claim 1.

As claim 1 is not anticipated by Swift, all claims depending from claim 1 are also allowable as they include limitations not found in the cited reference.

*Yamamoto- Independent Claim 13*

Yamamoto is a “graphic data conversion method” that converts a first format of a drawing or a product into basic elements, then converts the data stored in an intermediate data file into the data of a second format. Most notably, Yamamoto has nothing to do with stereoscopic formats, or converting an input image from a first format into a second stereoscopic format. Thus with respect to claim 13, as amended, Yamamoto does not show “a device for converting an input image having a first format to an output image

having a second *stereoscopic* format...comprising...a software-enabled matrix that sets forth predefined relationships between one format for image input and a different format for image output, wherein the *different format is a stereoscopic format...*” This requirement differs from the Yamamoto reference, and for this reason claim 13 is not anticipated by Yamamoto.

Claim 14, depending from claim 13, is also allowable as it includes limitations not shown by the cited reference.

*New claims 15-21*

Applicants have added new claim 15, depending from claim 1, and as claim 1 is allowable as discussed above, claim 15 includes limitations not shown in Swift and is therefore allowable.

Claim 16 recites “converting each pixel of the input image to a corresponding pixel for the output image in accord with a map setting forth a predefined relationship between [a] first *stereoscopic* format and [a] second *stereoscopic* format...” As noted above, neither Swift nor Yamamoto enable conversion of an input image in one stereo format to an output image in a different stereo format using a map as claimed in claim 16. Thus claim 16 is also allowable based on the cited references, and claims depending from allowable claim 16 are allowable as they include limitations not found in the cited references.

*Combining References*

Applicants also dispute the combination of Swift with Yamamoto, or Swift with Loveridge in the manner suggested. Applicants submit that there is no reasoning supporting combining Swift with Yamamoto, or Swift with Loveridge, and that it is only through the use of impermissible hindsight that the Applicants’ claims may be constructed from the reference and purported knowledge in the art. Such hindsight reconstruction of the invention is impermissible. *In Re Vaeck*, 947 F.2d 488 (Fed. Cir.

1991); *In Re Laskowski*, 871 F.2d 115, 117 (Fed. Cir. 1989); *see also, Ex Parte Lange*, 72 U.S.P.Q. 90, 91 (C.C.P.A. 1947).

The Patent Office must show that some reason to combine the elements with some rational underpinning that would lead an individual of ordinary skill in the art to combine the relevant teachings of the references. *KSR International Co. v. Teleflex Inc.*, No. 04-1350, 550 U.S. \_\_\_\_ (2007); *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). Therefore, a combination of relevant teachings alone is insufficient grounds to establish obviousness, absent some reason for one of ordinary skill in the art to do so. *Fine* at 1075. In this case, the Examiner has not pointed to any cogent, supportable reason that would lead an artisan of ordinary skill in the art to come up with the claimed invention. The Examiner presents the broad suggestion in Yamamoto to “carry out unrestricted conversion of graphic data” (Office Action, p. 6), and the statement in Loveridge of “to achieve improved performance characteristics” (Office Action, p. 7), which are generic statements of overarching desired results, and in reality form no reason supporting combining the references.

None of the references, alone or in combination, teaches the unique features called for in the claims. It is impermissible hindsight reasoning to pick a feature here and there from among the references to construct a hypothetical combination which obviates the claims.

It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps. [*citation omitted*]

*In re Gordon*, 18 USPQ.2d 1885, 1888 (Fed. Cir. 1991).

A large number of devices may exist in the prior art where, if the prior art be disregarded as to its content, purpose, mode of operation and general context, the several elements claimed by the applicant, if taken individually, may be disclosed. However, the

important thing to recognize is that the reason for combining these elements in any way to meet Appellants' claims only becomes obvious, if at all, when considered from hindsight in the light of the application disclosure. The Federal Circuit has stressed that the "decisionmaker must step backward in time and into the shoes worn by a person having ordinary skill in the art when the invention was unknown and just before it was made." *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1566 (Fed. Cir. 1987). To do otherwise would be to apply hindsight reconstruction, which has been strongly discouraged by the Federal Circuit. *Id.* at 1568.

To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

*W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983). Therefore, without some reason in the references to combine the cited prior art teachings, with some rational underpinnings for such a reason, an Examiner's conclusory statements in support of the alleged combination fail to establish a prima facie case for obviousness. *See, KSR International Co. v. Teleflex Inc.*, No. 04-1350, 550 U.S. \_\_\_\_ (2007) (obviousness determination requires looking at "whether there was an apparent reason to combine the known elements in the fashion claimed...", citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness," KSR at 14).

Simply stating that the invention would have been obvious to a person of ordinary skill is also insufficient, for the assertion must be supported by clear and convincing evidence. *Panduit, supra*, 810 F.2d at 1568. The Office Action merely states that the invention would be obvious in light of the proposed combination, and did not provide clear and convincing evidence or reasoning to support this assertion.

The Examiner has failed to avoid the effects of hindsight reasoning in fashioning the alleged combination of references and general knowledge in the art, presents no reasons having rational underpinnings in support of the combination, and for these further reasons dependent claims 2-6, 8, and 10-12 are allowable. All claims depending from allowable claims 15, 26, and 37 are allowable as they include limitations not found in the cited references, alone or in combination.

Accordingly, it is respectfully submitted that all pending claims fully comply with 35 U.S.C. §§ 102 and 103.

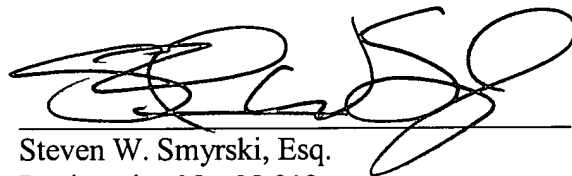
**CONCLUSION**

In view of the foregoing, it is respectfully submitted that all claims of the present application are in condition for allowance. Reconsideration of all of the claims, as amended, is respectfully requested and allowance of all pending claims at an early date is solicited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants believe that no fees are due in accordance with this Amendment beyond those included herewith. Should any additional fees be due, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account 502026.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Smyrski', is written over a horizontal line.

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